

VICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL

CIVIL DIVISION

BUILDING AND PROPERTY LIST

VCAT REFERENCE NO. BP895/2018

APPLICANTS	Wei Min Ma, Ying Huang
RESPONDENT	David Stogiannou t/as Stablecrete (ABN: 48 164 043 519)
WHERE HELD	Melbourne
BEFORE	Senior Member S. Kirton
HEARING TYPE	Compulsory Conference
DATE OF HEARING	3 December 2018
DATE OF ORDER	7 December 2018
CITATION	Ma v Stogiannou (Building and Property) [2018] VCAT 1942

ORDERS

1. Pursuant to section 87 of the *Victorian Civil and Administrative Tribunal Act 1998*, the proceeding is determined adversely to the respondent.
2. The respondent must pay the applicants the sum of \$94,930.
3. Pursuant to s.115B of the *Victorian Civil and Administrative Tribunal Act 1998*, the respondent must reimburse the applicants the filing fee in the sum of \$467.80.

SENIOR MEMBER S. KIRTON

APPEARANCES:

For the Applicants

Mr Ma and Ms Huang in person

For the Respondent

No appearance

REASONS

Findings:

- 1 There was no appearance by the respondent at the compulsory conference. The date and time of the compulsory conference were set at the directions hearing held on 21 August 2018, at which the respondent was represented. Accordingly, I am satisfied that he was aware of the compulsory conference.
- 2 Having heard evidence from the applicants, and reviewing the tendered documents, I am satisfied of the following matters.
- 3 The applicants and the respondent entered into a contract ("**the Contract**") when the applicants accepted the respondent's quote dated 23 October 2017 ("**the Quote**"). Evidence of acceptance is constituted by the signatures of both parties on the copy of the quote tendered in the hearing.
- 4 The scope of work contained in the Quote is for the respondent to carry out extensive hard- and soft- landscaping at the applicants' property in Ivanhoe, for the contract sum of \$199,210, including GST. The work included concreting crossover and footpath, concreting driveway pathways and paving, constructing a pergola, retaining walls, front fence, garden beds, water features, installing lighting, plumbing, electrical wiring, water irrigation, clothes line, gates and plants.
- 5 It was a term of the Contract, set out in the Quote, that the applicants would pay the respondent in five progress payments, due at the "commencement of" each stage of work.
- 6 The applicants gave evidence that the respondent commenced work in October 2017 and continued until December 2017, but did not complete the Contract. As at December 2017, the applicants had paid the respondent the first three progress payments, being a total of \$109,565.50.
- 7 Since December 2017 the respondent has failed or refused to return to the site. The applicants tendered photographs taken by them which showed the state of the work completed by the respondent.
- 8 They also relied on two estimates provided by other contractors as to the value of the works which had been carried out by the respondent. These were as follows:
 - a PDN Homes which estimated the value of the completed works at \$15,769; and
 - b Oaklake Investments Pty Ltd which estimated the value of the completed works at \$13,500.
- 9 The applicants seek to rely on the average of the two estimates, being \$14,635.

- 10 They seek a refund of the monies paid to the respondent (\$109,565.50) less an allowance for the value of the works which had been performed by him (\$14,635) being \$94,930.
- 11 As the respondent was supplying to the applicants as a consumer, services in trade or commerce, the applicants were entitled to the benefit of certain guarantees under *The Australian Consumer Law*, including the guarantees created:
 - a. by s.60, that the services supplied by the respondent would be rendered with due care and skill;
 - b. by s.61, that the services would be reasonably fit for purpose; and
 - c. by s.62, that the services would be supplied within a reasonable time.
- 12 Further, as the respondent was performing work within the meaning of *domestic building work* as defined in the *Domestic Building Contracts Act 1995*, the applicant was entitled to the benefit of the implied warranties regarding the work set out in s.8 of that Act, including the warranties created:
 - a. by s.8(a), that the work would be carried out in a proper and workmanlike manner; and
 - b. by s.8(c), that the work would be carried out with reasonable care and skill.
- 13 In failing to complete the work under the Contract, and/or failing to carry out the work with due care and skill, the respondent has breached the guarantees created by *The Australian Consumer Law*.
- 14 Further, in failing to complete the work under the Contract, and/or failing to carry out the work in a proper and workmanlike manner, or with reasonable care and skill, the respondent has breached the implied warranties created by the *Domestic Building Contracts Act 1995*.
- 15 As a result of the above findings, I am satisfied that the applicants are entitled to a refund of the amount paid to the respondent, less an allowance for the value of the work to date, in the sum of \$94,930.
- 16 Further, as the applicants have been substantially successful in their claim, they are entitled under s.115B of the *Victorian Civil and Administrative Tribunal Act 1998* to an order that they be reimbursed by the respondent the filing fee they paid, in the sum of \$467.80.

Orders

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2. The respondent must pay the applicants the sum of \$94,930.

3. Pursuant to s.115B of the *Victorian Civil and Administrative Tribunal Act* 1998, the respondent must reimburse the applicants the filing fee in the sum of \$467.80.

SENIOR MEMBER S. KIRTON